HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

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Writ Petition No.6714 of 2005

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Dated: 20th December, 2005

Between:

1. M/s.Someswara Cements & Chemicals Ltd., Room No.209,
II floor, Rahmat commercial Complex, Ameerpet,
Hyderabad-16 rep. by its Managing Director Shri M.Venkat
Ratnam and another.

..... PETITIONERS

AND

1. The Assistant Provident Fund Commissioner, Sub-Regional
Office, Employees Provident Fund Organisation, APSFC
Building, Balasamudram, Hanamkonda, Warangal District.
506 001 and another.

.....RESPONDENTS

HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

Writ Petition No.6714 of 2005

ORDER:

This writ petition has been filed by M/s.Someswara Cements and Chemicals Limited, Hyderabad, represented by its Managing Director-M.Venkat Ratnam assailing the Notice dated 02.02.2005 issued by the Assistant Provident Fund

Commissioner, Sub-Regional Office, Employees Provident Fund Organisation, Hanamkonda, Warangal District-1st respondent, whereby and whereunder the petitioners have been directed to remit P.F. dues within 5 days from the date of receipt of the notice.

2. The Managing Director of the company has sworn to the writ affidavit. The case of the petitioners as disclosed in the writ affidavit, in brief, is as follows:- The petitioners-company started in the year 1983. By 1990 the net worth of the company eroded, the company became sick and referred to BIFR. A rehabilitation scheme was sanctioned in June, 1993. Subsequently, the rehabilitation scheme proved to be futile. The proceedings before the BIFR came to be concluded on 25.04.2001. Paras.8 and 9 of the order passed by the BIFR read as follows:

> "8.After hearing the submissions of the OA, secured creditors and the company, the Bench noted that the OA had indicated that the company had not come out with any viable rehabilitation proposal and they had no objection to the winding up of the company. The secured creditors also mentioned the same. The rehabilitation proposal of the company for starting a new line for producing lime products instead of cement with the same equipment was not considered viable and acceptable by the OA as the OA indicated that the net worth of the company would not become positive even after a very long period of twenty years and no rehabilitation proposal beyond ten years would be considered for the rehabilitation of the company. The company had failed to submit any rehabilitation proposal and was trying to prolong the protection available to it under the Act and had not taken any steps to make its net worth positive and to meet its financial liabilities within a reasonable timeframe and that the company viz., Someswara Cement and Chemicals Ltd., as a result thereof is not likely to become viable in future and that it is just, equitable and in public interest that this company should be wound up. Accordingly, the Bench confirmed its earlier prima facie opinion U/S.20(1) of Act that it would be just, equitable and in public interest if the sick company, Someswara Cement and Chemicals Ltd. was wound up. Let this opinion be forwarded to the concerned High Court of jurisdiction along with copies of all the proceedings/orders passed by BIFR in the case from time to time, for further necessary action as per the Law.
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> 9. IDBI was permitted to refund the amount of Rs.50 lakhs kept in the no lien account with them together with interest to the GIL."

An appeal came to be filed before the appellate authority for Industrial and Financial Reconstruction, New Delhi. The appellate authority registered the

appeal as Appeal No.200/2001. The appeal ended in dismissal on 02.08.2001 confirming the order dated 25.04.2001 passed by the BIFR. The relevant portion of the order passed by the appellate authority reads as follows:

> "Proceedings under SICA are required to be concluded expeditiously. This case has already been before BIFR for about 10 years and efforts for the rehabilitation of the company despite the sanction of two schemes have failed. The cost of the rehabilitation scheme in June, 93 was Rs.1.91 cr. The scheme was based on re-schedulement of liabilities. The cost of the second scheme sanctioned on 31.3.97 rose to Rs.13.96 cr. which was based on OTS of the dues of the FIs, involving substantial sacrifice by them. Both the schemes failed due to inability of the old and new promoters to bring in sufficient funds as required under the scheme. The final scheme submitted by the company/MVL has been rejected by the secured creditors without whose consent u/s.19(2) of SICA it is not possible to sanction any scheme requiring their financial assistance by way of huge sacrifices as proposed by the company. The liabilities have also continuously increased from 1990 and, as admitted by the company, these went up to Rs.31 cr. as on 31.3.2000 (the statutory liabilities of about Rs.5. cr. and the liabilities of about Rs.26 cr. to the FIs and banks). The company is too heavily indebted. We do not see any possibility of rehabilitating it. No ground has been made out for interference in the impugned order.
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> The appeal is dismissed."

The petitioners filed W.P.No.26130 of 2001 questioning the order dated 25.04.2001 passed by the BIFR as confirmed by the AIFR in Appeal No.200/2001. An order of *status quo* came to be obtained by the petitioners as per order dated 27.12.2001 in WPMP No.33107 of 2001 in WP No.26130 of 2001. The proceedings in RCC No.7 of 2001 are also pending adjudication before the High Court. The respondents issued demand notices dated 28.09.2004 demanding the petitioners to pay the provident fund dues of Rs.14,08,818, Rs.6,33,980/- and damages of Rs.18.93,559/-. The demands came to be reiterated by way of notices dated 06.09.2001. It is the contention of the petitioners that the demand made by the respondents is not legal in view of the pendency of the RCC No.7 of 2001. It is the further case of the petitioners that they submitted elaborate explanation and the respondents without considering their explanation are proceeding to take coercive steps against the petitioners, and thus, they approached this court by invoking the jurisdiction under Article 226 of the Constitution of India.

3. Counter affidavit has been filed by the respondents. It is stated in the counter affidavit that the petitioners-Company filed W.P.No.26130 of 2001 questioning the order dated 25.04.2001 passed by the BIFR as confirmed by the AAIFR in Appeal No.200 of 2001 without making E.P.F. Organisation as respondent and secured *Status Quo* order dated 27.12.2001 in WPMP No.33107 of 2001. But the Official Liquidator informed the respondents that he handed over the assets of the company to the Management vide letter No.467 dated 19.08.2004. Therefore, the respondents issued a demand notice dated 28.09.2004 for payment of the Provident Fund dues for the period from 03/93 to 06/97 for an amount of Rs,.14,08,818/-, penal damages for the period from 03/93 to 02/97 for an amount of Rs.18,93,559/- and the interest for the period from 01.03.1994 to 28.02.1997 for an amount of Rs.6,33,980/- on belated remittances. It is also stated in the counter-affidavit that the petitioners questioned the original orders passed U/Ss.7-A and 14-B of the Employees Provident Fund and Miscellaneous Provisions Act, 1952, (for short, 'the Act'). Para.7 of the counter affidavit needs to be noted and it is thus:

> "7. It is further submitted that the writ petitioner never questioned the original orders passed U/S.7-A and 14-B of E.P.F. & M.P.Act. As long as original orders are in force, the respondents are having every right to initiate steps to collect P.F.dues, arrears and interest as per the provisions of E.P.F. & M.P. Act. And further well settled law that where power is vested under a statute in an authority to be exercised at any time and the same was examining and held by the apex Court in R.P.F.Commissioner v. K.T.Rolling Mills Pvt. Ltd. It has to be exercised within a reasonable time even if there is no period of limitation is prescribed. And initiation of the recovery proceedings after 12 years was not considered as unreasonable. In the present case, there is no laches on part of the respondents to initiate action for recovery of P.F. dues. Hence, the action of the respondents is not barred by limitation."

4. Heard learned counsel appearing for the petitioners and learned Standing Counsel appearing for the respondents.

5. Learned counsel appearing for the petitioners submits that demanding the petitioners to pay the provident fund due amounts without considering the

representation submitted by them on 12.01.2005 is arbitrary and illegal. The learned counsel further submits that the respondents are not justified in demanding the provident fund dues pending the proceedings before the High Court in RCC No.7 of 2001 and W.P.No.26130 of 2001. He refers the representation dated 12.01.2005 submitted to the Assistant Provident Fund Commissioner, SRO, EPF Organisation-1st respondent, wherein the petitioners assured the respondents to pay 20% of P.F. dues as down payment as soon as the petitioners revive the company and balance 80% in 60 equal monthly installments as per General P.F. Commissioner's Order No. X-11/6(26)/92-93/AP/ dated 28.04.1997.

6. Learned Standing Counsel appearing for the respondents submits that the petitioners are in possession of the assets of the company and therefore, they are bound to pay the provident fund dues. Learned Standing Counsel further submits that order passed under Section 7-A of the Act reached the finality and therefore, the petitioners cannot be permitted to challenge the notice dated 02.02.2005 where under the petitioners are asked to pay the P.F. dues.

7. This case has a chequered career. The BIFR by its order dated 25.04.2001 recorded a categorical finding that the Company is liable to be wound up. The order passed by the BIFR came to be challenged before the AAIFR and the appellate authority confirmed the order of the BIFR. The provident fund dues payable by the Company relates to the period from March, 1994 to July, 1996. The order passed by the respondents with regard to P.F. dues reached finality. The notice impugned in the writ petition is only a reiteration of the earlier demands made by the respondents. The learned Standing Counsel appearing for the respondents placed on record a copy of the letter dated 19.08.2004 whereunder the Official Liquidator informed that the assets of the Company have been handed over to the petitioners on 22.10.1999. The letter dated 19.08.2004 addressed by the Official Liquidator, High Court of A.P., Hyderabad to the Assistant Provident Fund Commissioner (REC), SRO, Warangal reads as follows:

"Sir,

Sub:M/s.Someshwara Cements & Chemicals Ltd. -

Reg.

Ref:Your letter dt.23.4.2004.

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With reference to the above, I am to inform you that by an order dt.8.10.1999 made in OSA Nos.41 & 45/99, the Hon'ble High Court of Andhra Pradesh, Hyderabad, was pleased to set aside the winding up order dt.6.8.98 made in C.P.No.18/98 of M/s.Someshwara Cements & Chemicals Ltd. Accordingly, the possession of the assets of the company was handed over to the Management on 22.10.1999 by this office. A copy of the order is enclosed for your reference.

This is for your information."

The petitioners are in possession of the assets of the company. The order passed by the respondents under the provisions of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 reached the finality. The notice impugned in the writ petition is only a reiteration of the earlier demands. There is no illegality or impropriety in the notice issued by the respondents demanding the petitioners to pay the provident fund dues. I find that the writ petition is devoid of merits and the same is liable to be dismissed.

8. Accordingly, the writ petition is dismissed. No costs.

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B.SESHASAYANA REDDY, J.

Date: 20th December, 2005.

Note:

Issue C.C. within a week.

B/O

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